

SOUTHERN ENVIRONMENTAL LAW CENTER

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November 11, 2015

VIA U.S. MAIL and FOIAonline

U.S. Environmental Protection Agency
Regional Freedom of Information Officer
Region 4
AFC Bldg., 61 Forsyth Street, S.W., 9th Fl.
Atlanta, GA 30303-8960

**Re: Freedom of Information Act Request: Tennessee Valley Authority - Kingston
Fossil Plant Solid Waste Disposal Facility, Class II Landfill (Tenn. Permit
No. IDL730000211)**

Dear Sir or Madam:

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center (SELC) requests the following documents, including correspondences, relating to the Tennessee Valley Authority - Kingston Fossil Plant Solid Waste Disposal Facility, Class II Landfill, Tennessee Permit No. IDL730000211 (the "Peninsula Landfill") and/or any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2:

1. All communications from January 2010 to the present between the Tennessee Department of Environment and Conservation (TDEC) and the U.S. Environmental Protection Agency (EPA) regarding the Peninsula Landfill and/or any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2.
2. All communications from January 2010 to the present between the Tennessee Valley Authority (TVA) and EPA regarding the Peninsula Landfill and/or any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2.
3. All communications from January 2010 to the present between TDEC and EPA regarding draft or final versions of the "Disposal of Coal Combustion Residuals from Electric Utilities" Rule (CCR Rule), including but not limited to clarification requests.
4. All communications from January 2010 to the present between TVA and EPA regarding the draft or final versions of the CCR Rule.
5. Any internal EPA notes since January 2010 relating to any communications or discussions with TVA regarding the Peninsula Landfill and/or any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2, or the CCR Rule.

6. Any internal EPA notes since January 2010 relating to any communications or discussions with TDEC regarding the Peninsula Landfill, and/or any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2, or the CCR Rule.
7. All communications since January 2010 related specifically to the application of the CCR Rule to specific individual TVA landfills, including the Peninsula Landfill and/or any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2.
8. Any documents related to the actual or potential effects of storing coal combustion residuals in the Peninsula Landfill and/or any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2, on waters of the United States or any federally protected or state protected species.

Due to the massive coal ash spill at the Tennessee Valley Authority - Kingston Fossil Plant ("Kingston Plant") on December 22, 2008, we recognize that EPA likely possesses a substantial number of records generally relating to the Kingston Plant and coal ash. To be clear, we are not seeking records related to that spill and its subsequent clean-up. Rather, we are only requesting records related to the Peninsula Landfill and any specific cell or phase of the Peninsula Landfill, including Phase 1A, Phase 1B or Phase 2, which obtained a state solid waste permit from TDEC to receive gypsum in 2007, experienced a massive sink-hole ("drop out") in 2010, and obtained a major modification to its state solid waste permit in 2015.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic: materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the Environmental Protection Agency.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should our requests be denied, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. *See* 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D.Colo.1994); *Etlinger v. FBI*, 596 F. Supp 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers...." *Pederson*, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over 25 years of experience disseminating public information regarding Corps regulatory and operations issues. *See* 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. Lawyers at SELC are interviewed by the media to explain their work and its significance. SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. SELC also speaks at conferences on particular topics. SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government and of potential or proposed major policy incentives. SELC further certifies that disclosure of the information sought is not in our commercial interest.

Should SELC's request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$100.00. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to contact me at 615-921-9460 or apassino@selctn.org. I appreciate your prompt attention to this matter and look forward to receiving the public records requested.

Sincerely,



Anne E. Passino
Staff Attorney